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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------------|------------------|
| 10/050,695 | 01/15/2002 | Thomas J. Martuch | 5317USACIP | 6717 |
| 7590 | | 10/15/2003 | | |
| Douglas Taylor General Mills, Inc. 1 General Mills Boulevard P.O. Box 1113 Minneapolis, MN 55404 | | | | |
| | | | EXAMINER BHAT, NINA NMN | |
| | | | ART UNIT 1761 | PAPER NUMBER |

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/050,695 | MARTUCH ET AL. | |
| | Examiner | Art Unit | |
| | N. Bhat | 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 03 May 2002 and 10-24-2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

1. Applicant is requested to claim the domestic priority of on Page 1, line 1 of the specification. Applicant is to include the continuity data, which indicates that this application is a CIP of PCT/US00/17111, filed June 22, 2000 and is a CON of 9/354,545, filed July 15, 1999 now U.S. Patent 6,306,448, which is a continuation of 09/943,637 filed August 31, 2001.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,306,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the patent claim an expandable microwave package for holding a food product for popping or puffing or expanding in a microwave oven comprising in combination a bag having an interior for holding a charge of food product to be subjected to microwave energy and having a top wall including an access opening, with the bag further including a closure portion having

an outer periphery of a size greater than the access opening with the bag expanding into an expanded condition with the seal being generally oval in shape. In the '448 patent does not recite that the seal is oval in shape but the outer periphery of the closure portion and access opening are generally oval in shape. The seal as claimed is described in more generic and broader terms however from the figures the seal although not claimed as being oval is substantially oval and to provide the seal as claimed in the expandable microwave package would have been obvious to one having ordinary skill in the art absent criticality in showing.

4. Claims 1-35 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-43 of copending Application No. 09943,637, now allowed. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and that of the '637 application claim an expandable microwave package for holding a food product for popping or puffing or expanding in a microwave oven comprising a bag, having an interior for holding a charge of food, which includes closure portion having an outer periphery of a size greater than the access opening, with the bag including a seal between the closure portion and the wall around the access opening with the bag expandable into an expanded condition. The '637 application does further describe the seal and how the seal is formed from wet seal adhesive which does not vent as well as being formed by a plurality of spaced generally parallel bands defining a plurality of spaced parallel spaces and that a V-shaped seal is provided when opened. The seal is not described as an oval as claimed in the instant invention but the

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seal is provided between the closure portion and the wall around the access opening and the closure portion having an outer periphery of a size greater than the access opening and to provide the seal or opening having an oval shape as claimed would have been an obvious modification of the expandable bag construction to one having ordinary skill in the art and the instant application as claimed is broader in scope than has been claimed in the '637 and the seal as broadly claimed overlaps in scope to what has been claimed in the '637 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. With a timely filed and properly executed Terminal Disclaimer, the case would be free of the prior art and condition for allowance.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ji et al. teach a microwave food package and method the bag has an oval opening and seal arrangement see Figure 9, element 59. Scrimager teaches a microwave popcorn-serving package with a releasably lap seam. Monforton teaches an easily expandable nontrapping flexible paper. Nottingham et al. teaches an expansible container made of flexible materials; the opening is substantially oval or elliptical in shape.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat
Primary Examiner
Art Unit 1761